

Ten Eyck Hotel Associates d/b/a Hilton Inn Albany and Barbara Dietrich

Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO and Barbara Dietrich. Cases 3-CA-10864 and 3-CB-3987

25 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 4 March 1983 Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent Employer, the Respondent Union, and the General Counsel each filed exceptions with a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent Employer violated Section 8(a)(2) by extending premature recognition to the Union and by executing a collective-bargaining agreement with it. Correspondingly the judge found that the Respondent Union violated Section 8(b)(1)(A) by accepting recognition and executing the collective-bargaining agreement. We agree with these findings but rely only on the facts and the reasons set forth below. We further agree with the judge that the Respondent Employer violated Section 8(a)(3) and the Respondent Union violated Section 8(b)(2) by maintaining and enforcing the union-security and dues-checkoff provisions of the unlawfully executed contract.

The Employer operates a hotel which opened to the public for business 29 November 1981. The opening had been postponed several times from the

original summer 1981 target date because of delays in construction and in obtaining an official certificate of occupancy. The hotel contains 392 guest rooms, a banquet ballroom, a formal dining room, an informal restaurant and bar, and a lounge. At the opening 79 rooms were occupied of which 51 were paid for by guests. The dining room did not open until January 1982 and the lounge did not open until March.

By 2 November 1981 64 employees had been hired. On that date following an employee meeting held by the Employer the Union obtained 48 signed membership cards and, on the basis of that majority, requested recognition from the Employer. Following a card check by an arbitrator² the Employer recognized the Union 4 November and the parties proceeded to negotiate a collective-bargaining agreement³ which became effective 15 November, 2 weeks prior to the hotel's opening.

Vartan Tchekmeian, a senior official of the Employer, testified that at the time of recognition he had anticipated a slow startup period for the hotel based on market studies of Albany and on his experience with similar new facilities in other cities. He testified that there was initially a projected need for 60-70 unit employees at opening with an increase to no more than 100 employees until March 1982.⁴ He further testified that he had anticipated that the work force would eventually stabilize at approximately 220-230 employees in 1-1/2 to 2-1/2 years. According to Tchekmeian, however, the hotel received an unexpectedly high number of short-term bookings at the end of November and in December thus necessitating hiring far in excess of the short-term projection. The judge discredited Tchekmeian's testimony on the Respondent's initial projections and on the basis of figures set forth below we agree this testimony is unworthy of belief.

The record clearly reveals that the Employer's hiring practices before the hotel opened 29 Novem-

¹ The Respondent Employer and the Respondent Union have each accepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that the Respondent Employer violated Sec. 8(a)(2) and (1) of the Act by assisting the Respondent Union in its solicitation of authorization cards. We reverse this finding on the grounds that the violation was not alleged in the complaint and was specifically disavowed at trial by the General Counsel. The complaint did allege that the Respondent Union violated Sec. 8(b)(1)(A) of the Act by using threats of discharge to coerce employees into signing authorization cards. The judge discussed the facts surrounding the employees' meeting of 2 November 1981 but made no finding or conclusion of law with respect to this specific allegation. There were no exceptions to the judge's implicit dismissal of the allegation.

² The record shows that the arbitrator inadvertently counted the card of Jeanette Strutynski. She had attended the 2 November meeting but was not actually hired until 16 November. The card majority was composed of 47 members of the work force hired but not necessarily working by the date recognition was granted.

³ The recognition clause set forth in the contract lists 16 job classifications in the unit:

All full-time and regular part-time employees including Housemen, Maid-Laundry, Inspectors, Bell Person, Bus Person, First Cook, Second Cook, Kitchen Utility, Maintenance Employees, Maintenance Helpers, Bartender, Waiter-Waitress-Cocktail, Hostess, Banquet Waiters-Waitresses, Banquet Bartenders, Cook-Trainee/Salad Preparer, but excluding all other employees, office clerical employees, desk clerks, night auditors, cashiers, PBX operators, guards and supervisors as defined in the Act.

⁴ In apparent reference to contingencies arising after the hotel opened, he noted that there was a possibility that 30 to 50 more employees would be needed depending on the opening and the type and number of problems that arose.

ber is consistent only with an initial intention by the Employer to hire a full complement of employees about the date it opened its hotel. By 4 November it had hired approximately 76 unit employees, by 11 November approximately 94, by 18 November approximately 141 (well over the asserted employment projection for March 1982), and by 25 November approximately 171. About the time the hotel opened, it had hired over 200 unit employees and by 9 December it had hired 250 unit employees.⁵ This steady increase in the number of employees throughout the entire month of November is inconsistent with the Employer's claimed projections and is not explained by reference to the receipt of a high number of bookings in late November which occurred after the Employer had already departed from its claimed projections. Accordingly we agree with the judge's conclusion that at the time it recognized the Union 4 November the Employer knew that it contemplated greatly expanding its work force in the immediate future.

The payroll records in evidence additionally reveal that many of the employees who had been hired at the time the Employer recognized the Union had not yet performed any work for the Employer. In the first payroll period which ended the day after recognition only 31 of the 76 employees hired had actually worked any hours and only 18 of the 31 had worked for more than 8 hours. During the following month the number of employees who were actually working greatly increased. By the payroll period ending 19 November the complement of working employees increased to 97 (73 having worked over 8 hours) and by the next payroll period ending 2 December over 200 employees were working (206 having worked over 8 hours). The corresponding total number of hours worked increased at an even greater rate over this period.

The record is less than precise regarding the classifications of the employees who were hired during this period. However, it appears that the Employer initially had developed approximately 20 classifications for which employees were to be hired.⁶ At the time recognition was granted 4 No-

vember employees in 11 of the 20 classifications had been hired.⁷ It additionally appears that at the time of recognition employees in only 6 of the 20 classifications had worked 8 hours or more.⁸

The record further shows that employees who were working prior to opening were not necessarily engaged in the normal tasks for which they were employed. Many employees performed whatever work was necessary to prepare the hotel for its public opening. For example, one employee hired as a banquet waitress cleaned floors. Although food was being served on the premises to other employees, construction workers and managerial personnel, the restaurants were not formally opened. During the preopening period the testimony indicates the employees in various classifications such as maids, cooks, and other kitchen personnel were being trained.

The issue presented is whether on these facts recognition was offered and accepted prematurely. If so then both the Employer and the Union have violated the Act. The Board's well-established test for determining whether recognition has been lawfully extended is twofold. At the time of recognition (1) an employer must employ a substantial and representative complement of its projected work force, that is, the jobs or job classifications designated for the operation must be substantially filled, and (2) the employer must be engaged in normal business operations.⁹

The Board has not established any mathematical formula or any per se rule for resolving the issue of premature recognition but has evaluated the facts in each case to decide whether employees realistically have had an opportunity to select a bargaining representative. Although not determinative in an unfair labor practice case the Board has looked for guidance to the test set forth in *General Extrusion*¹⁰ to determine whether the first prong of the recognition test has been satisfied. The Board's overall goal is to accommodate the right of employees who have already been hired to representation without undue delay to the right of employees yet to be hired to have their bargaining representative selected by a substantial and representative complement of employees engaged in the employer's normal business operations.

⁵ Over the 9-month period from the opening until 1 September 1982 the complement of unit employees ranged from 206 up to 287 and averaged on a weekly basis approximately 256 employees.

⁶ These classifications consisted of bellmen, inspectress, maids, commercial maids, housemen, laundry, cooks, kitchen utility, waiters/waitresses, hosts/hostesses, busboys, food and beverage cleaners, banquet servers, banquet utility, cocktail waitresses, bar busboys, maintenance, and banquet bartenders. The record is unclear whether the additional classification of bar host/hostess was also included or whether the included classification of laundry supervisor was nonsupervisory under the Act.

⁷ These 11 classifications included inspectress, maids, housemen, cooks, kitchen utility, waiters/waitresses, food and beverage cleaners, banquet servers, banquet utility, cocktail waitresses, and maintenance.

⁸ The six classifications included inspectress, maids, housemen, cooks, kitchen utility, and hosts/hostesses.

⁹ *Herman Bros.*, 264 NLRB 439 (1982); *Lianco Container Corp.*, 173 NLRB 1444 (1969).

¹⁰ *General Extrusion Co.*, 121 NLRB 1165 (1958). There the Board held that an existing contract will bar an election if, compared to the hearing date, the employer employed 30 percent of its employees in 50 percent of the job classifications at the time the contract was signed.

As the first prong of the *Herman Bros.* test relating to the substantial filling of jobs or job classifications the Employer would appear to have at best just met the *General Extrusion* standards. Based on the Employer's estimate of 220-230 employees in approximately 20 classifications when in full operation, it appears the 76 employees hired by 4 November into 11 classifications constituted 33 to 35 percent of the full work force and 55 percent of the classifications.¹¹ However, as noted above, the application of a mathematical formula is not the criteria by which the substantial filling of jobs and jobs classifications is ascertained. The facts set forth above indicate that at the time the Employer granted recognition to the Union, based on otherwise valid authorization cards from 47 of 76 employees who were then hired, most of the employees had performed no significant amount of work for the Employer. Only 31 employees had performed any work by 5 November and only 18 of them had worked for more than 8 hours. These 18 or 31 employees constitute only 8 percent and 15 percent of the full work force respectively. Similarly, these 18 employees were hired in only 6 of the 20 classifications or 30 percent of the total.¹² On these facts we cannot agree that by 4 November the Employer had employed a substantial and representative complement of either its projected or actual full work force.

We also find that the Employer did not meet the second requirement for lawful recognition, namely that its facility be in normal operation at the date of recognition. The record evidence clearly supports a finding that the hotel on 4 November was closed to the public and only in the very earliest stages of preparation for serving the public with respect to either accommodations or dining. The work being performed on that date was limited to the training of cooks and kitchen personnel and the performance of maids' duties. By that date no bell persons, laundry workers, bus persons, maintenance employees, waiters, waitresses, busboys, bartenders, or any banquet employees had worked at all. Further the size of the employee complement actually working and the number of hours worked increased so rapidly immediately following recognition that under the circumstances of this case we find that the Employer on 4 November was simply not engaged in normal hotel operations or even

substantially full scale training and preparation for its later opening. The total absence from the Employer's training preparation efforts of so many vital hotel and restaurant functions more than belie the Respondent's contention of normal operations.

We accordingly find and conclude that by recognizing the Union at a time when the jobs or job classifications were not substantially filled and when the facility was not in normal operation and by executing a collective-bargaining agreement, the Employer violated Section 8(a)(1) and (2) of the Act. Also by accepting such recognition and executing the contract the Union violated Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. Ten Eyck Hotel Associates d/b/a Hilton Inn Albany is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By recognizing the Respondent Union 4 November 1981 as the exclusive bargaining representative of its employees and by executing and maintaining a collective-bargaining agreement with the Respondent Union 15 November 1981, the Respondent Employer has unlawfully assisted and supported the Respondent Union and has thereby violated Section 8(a)(2) and (1) of the Act.

4. By accepting recognition as the exclusive bargaining representative of the Respondent Employer's employees and by executing and maintaining the 15 November 1981 collective-bargaining agreement, the Respondent Union has restrained and coerced the employees in the exercise of rights guaranteed them by Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

5. By maintaining and enforcing the union-security and dues-checkoff provisions of the 15 November 1981 collective-bargaining agreement, the Respondent Employer has violated Section 8(a)(3) of the Act and the Respondent Union has violated Section 8(b)(2) of the Act.

6. These unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. Neither Respondent has otherwise violated the Act.

THE REMEDY

Having found that the Respondent Employer has engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act and

¹¹ The percentage of the work force employed 4 November is somewhat less if compared with the average of 256 employees employed during the 9 months after the hotel opened.

¹² A similar result is reached using the job classifications set forth in the subsequently negotiated collective-bargaining agreement. See fn. 3, above. Out of those 16 job classifications, approximately half were filled by at least one employee hired by 4 November, but only 6 of 16 were filled by employees who had worked more than 8 hours.

that the Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2), we shall order each Respondent to cease and desist and to take certain affirmative actions to effectuate the policies of the Act.

The Respondent Employer will be ordered to withdraw recognition from the Respondent Union and the latter will be ordered to cease accepting recognition from the former unless certified by the Board. Both Respondents will be ordered to cease giving effect to their 15 November 1981 collective-bargaining agreement, including all renewals, extensions, and modifications, and to cancel it entirely. The Respondent Employer and the Respondent Union will also be ordered jointly and severally to reimburse, with interest, all present and former employees for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the terms of the union-security and dues-checkoff provisions of the 15 November 1981 collective-bargaining agreement. However, reimbursement shall not extend to those employees who voluntarily joined and became members of the Union prior to 15 November 1981.¹³

ORDER

The National Labor Relations Board orders that A. Respondent Ten Eyck Hotel Associates d/b/a Hilton Inn Albany, Albany, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing Hotel, Motel and Restaurant Employees and Bartenders Union, Local, 471, AFL-CIO as the exclusive representative of its employees for the purpose of collective bargaining unless and until the Union is certified by the Board as the collective-bargaining representative of such employees pursuant to Section 9(c) of the Act.

(b) Maintaining or giving any effect to the collective-bargaining agreement between the Respondent and the Union entered into 15 November 1981 or any renewal, extension, or modification thereof unless and until the Union is certified by the Board as the collective-bargaining representative of such employees; provided however that nothing in this Order shall authorize or require any changes in wages or other terms and conditions of employment which may have been established pursuant to the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from the Union as the collective-bargaining representative of its employees unless and until the Union has been duly certified by the Board as the exclusive representative of such employees.

(b) Jointly and severally with the Respondent Union reimburse with interest all present and former employees for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the terms of the dues, reinstatement, and initiation fees clause and the union-security clause of the 15 November 1981 collective-bargaining agreement. However, reimbursement does not extend to those employees who voluntarily joined and became members of the Respondent Union prior to 15 November 1981.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of reimbursement due under the terms of this Order.

(d) Post at its facility copies of the attached notice marked "Appendix A."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent Employer authorized representative, shall be posted by the Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. Respondent Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting recognition from and executing a collective-bargaining agreement with Ten Eyck Hotel Associates d/b/a Hilton Inn Albany at a time when the Respondent Employer did not employ a representative number of its ultimate complement of unit employees and before it was engaged in normal business operations.

¹⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹³ See *Unit Train Coal Sales*, 234 NLRB 1265 (1978).

(b) Giving effect to the 15 November 1981 collective-bargaining agreement between the Respondent Employer and the Respondent Union or to any extension, renewal, or modification thereof.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with the Respondent Employer reimburse with interest all present and former employees for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the terms of the dues, reinstatement, and initiation fees clause and the union-security clause of the 15 November 1981 collective-bargaining agreement. However, reimbursement does not extend to those employees who voluntarily joined and became members of the Respondent Union prior to 15 November 1981.

(b) Post in its business office and other places where notices to its members are customarily posted copies of the attached notice marked "Appendix B."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Furnish the Regional Director with signed copies of the notice for posting by the Respondent Employer at the Hilton Inn Albany where notices to all employees are customarily posted. Copies of the notice, to be furnished by the Regional Director, shall be signed the Respondent Union and forthwith returned to the Regional Director.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

¹⁵ See fn. 14, above.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT recognize or contract with Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO as the bargaining representative of our employees until it has been certified as such representative by the National Labor Relations Board.

WE WILL NOT maintain or give effect to our 15 November 1981 contract with Local 471 or to any renewal, extension, or modification thereof but we are not authorized or required to withdraw or eliminate any wage rates or other benefits, terms, and conditions of employment which we have given to our employees under the contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT withdraw and withhold all recognition from Local 471 as the collective-bargaining representative of our employees.

WE WILL, jointly and severally with Local 471, reimburse with interest all our present and former employees, for all initiation fees and dues paid by them or withheld from them pursuant to the union-security clause and the dues-checkoff clause of the 15 November 1981 contract. However reimbursement will not extend to those employees who voluntarily joined Local 471 before 15 November 1981.

TEN EYCK HOTEL ASSOCIATES D/B/A
HILTON INN ALBANY

APPENDIX B

NOTICE TO MEMBERS NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT act as the exclusive bargaining representative of any employees of Ten Eyck Hotel Associates d/b/a Hilton Inn Albany unless and until we have demonstrated our majority status

and have been certified by the National Labor Relations Board.

WE WILL NOT maintain or give effect to the 15 November 1981 contract between this Union and Hilton Inn Albany or to any renewal, extension, or modification thereof.

WE WILL NOT in any like or related manner restrain or coerce the employees of Hilton Inn Albany in the exercise of the rights guaranteed them in Section 7 of the Act except to the extent that such rights may be affected by an agreement as authorized in Section 8(a)(3) of the Act.

WE WILL, jointly and severally with Hilton Inn Albany, reimburse with interest all present and former employees of Hilton Inn Albany for all initiation fees and dues paid by them or withheld from them pursuant to the union-security clause and the dues-checkoff clause of the 15 November 1981 contract. However, reimbursement will not extend to those employees who voluntarily joined Local 471 before 15 November 1981.

HOTEL, MOTEL AND RESTAURANT
EMPLOYEES AND BARTENDERS
UNION, LOCAL 471, AFL-CIO

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Upon separate charges of unfair labor practices filed on January 28, 1982, by Barbara Dietrich, an individual (the Charging Party), against Ten Eyck Hotel Associates d/b/a Hilton Inn Albany (Respondent Employer) and Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO (Respondent Union) an order consolidating cases, complaint, and notice of hearing was issued by the Regional Director for Region 3, pursuant to Section 102.33 of the Board's Rules and Regulations on behalf of the General Counsel on March 8, 1982.

The substance of the consolidated complaint alleges that Respondent Employer recognized Respondent Union, and thereafter entered into and maintained a collective-bargaining relationship and agreement with Respondent Union, although the latter at the time did not represent an uncoerced majority of the employees of Respondent Employer, while Respondent Employer had not employed a representative proportion of its ultimate employee complement, while job classifications had not been filled, and while Respondent Employer was not engaged in substantially normal business operations; and that by such conduct Respondent Employer has violated Section 8(a)(1), (2), and (3) of the Act, and Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act.

On March 11, 1982, Respondent Employer filed an answer in which it denied committing any of the unfair labor practices set forth in the consolidated complaint.

On March 19, 1982, Respondent Union filed an answer in which it denied committing any of the unfair labor practices set forth in the consolidated complaint.

The hearing in the above matter was held before me in Albany, New York, on September 29, 1982. Briefs have been received from counsel for the General Counsel, counsel for Respondent Employer, and counsel for Respondent Union, respectively, which have been carefully considered.

On the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Ten Eyck Hotel Associates d/b/a Hilton Inn Albany (Respondent Employer) is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

Respondent Employer, at all times material herein, has maintained its principal office and place of business at Ten Eyck Plaza, Albany, New York (the Albany facility), and is, and has been at all times material herein, engaged at said facility in the operation of a hotel, restaurant, and related services.

The complaint alleges, Respondent Employer admits, and I find that Respondent Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent Union admits, and I find that Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO (Respondent Union) is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

Completion of Respondent Employer's newly constructed hotel (Hilton Inn Albany) was projected for July 1, 1981, and the Employer proceeded to hire employees in or before March 1981, in preparation for opening business to the public in July. About April 1981, Respondent Union's representative Joseph Diliberto contacted Respondent Employer's vice president Vartan K. Tchekmeian and requested recognition. Vice President Tchekmeian had known union representative Diliberto for about 12 years. He told Diliberto that, if the employees were willing for the Union to represent them, it was up to them. The July date for completion of construction was postponed almost monthly until October, due to delays in construction. The Employer proceeded to hire earnestly for a late October opening, and it had hired a considerable number, 60-75, of employees by November 1, 1981, with the anticipation of eventually hiring approximately 260 or more employees.

Hilton Inn Albany opened for business on November 29, 1981. It was the first hotel opened in downtown

Albany since 1968. The facility has 392 guests rooms, a restaurant called the "Cinnamons," a formal dining room called "Truffles," a lounge called "Cahoots," a large ballroom used for banquets, and six meeting rooms. The hotel is a subsidiary of Servico, Inc., which manages the hotel and all aspects of its operation, including labor relations. When the hotel opened on November 29, 300 of its 392 rooms were available for occupancy. Seventy-nine rooms were actually occupied, of which 25 were complimentary, 3 rentals, and 51 paid for by guests. The Truffles dining room did not open for business until January 1982, and the Cahoots opened March 1982, respectively. Nor was the banquet kitchen opened, and other kitchen facilities were not complete on November 4, when the Hotel (Respondent Employer) recognized the Union as the collective-bargaining representative of its employees. Subsequently, the Union and the Hotel negotiated a collective-bargaining agreement about November 15, 1981, which was signed on December 30, 1981.¹

B. Respondent Extended Recognition to Respondent Union While it Continued to Hire Staff to Operate the Hotel

Neither Respondent Employer nor Respondent Union produced any witnesses in this proceeding and the testimony of the Charging Party witnesses herein is uncontested. In this regard, the record shows that individuals who had been hired by Respondent Employer prior to November 29, 1982, but had not actually commenced work, attended an employer-called meeting on November 2, 1981. According to the undisputed and credited testimony of newly hired Malinda Hull, who attended the meeting, the Employer's general manager Phillip Columbo introduced himself and other members of management, welcomed the 60 to 75 newly hired individuals, and informed them that he was not sure when the hotel would open for business, but that they would be contacted about training dates. Thereafter, Wolfgang Hammer, business agent for Respondent Union, who was present during the meeting, proceeded to distribute insurance and union authorization cards to the newly hired people as they met with respective department heads. Hammer urged and assisted the newly hired employees in filling in cards and answering questions about the cards and the Union.

Hull, who has a bachelor's and a master's degree in anthropology and linguistics, further testified without dispute that Hammer did not explain a distinction between the insurance and union authorization cards, and she "assumed it was a part of the [hiring] procedure to follow." Similarly, newly hired Steven Harald testified he filled out a union card because he felt he had no choice, since Catering Manager Slocum had previously informed him that the hotel was going to be a union house. Hammer collected the cards and submitted them to the Employer on November 3 for a card count by an arbitrator. The arbitrator issued his report on November 4, 1981, finding that as of November 3, 1981, the Union had signed cards from 48 of 64 of the newly hired individuals in the unit.

¹ The facts set forth above are undisputed and are not in conflict in the record.

All authorization cards (G.C. Exh. 12) on which the Union relied in the card count are dated November 2, 1981. However, an examination of the dates of hire (G.C. Exh. 6) of the signatories of those cards reveals that individuals were hired as employees on the dates as follows:

4-10/30/81	
30-10/31/81	
5-11/01/81	
8-11/02/81	
1-11/16/81	(Jeanette Strutynski hired 11/16/81; name is first reflected on 12/03/81 payroll.)

Hours Worked by Signatories as of Payroll Ending November 5, 1981 (G.C. Exh. 4)

0 hours.....	27
less than 7 hours.....	8
less than 10 hours.....	2
more than 10 hours.....	21

Classifications of Card Signers (G.C. Exhs. 4, 7, and 12)

Housemen (410.15).....	1
Maid/Laundry (410.09; 412.21).....	6
Inspectress (410.08).....	4
First Cook (Brackets reserved).....	
Second Cook (Brackets reserved) (511.32).....	9
Cook Trainee (Bracket reserved).....	
Kitchen Utility (511.33).....	4
Maintenance (Bracket reserved).....	
Maintenance Helper (Bracket) (1510.71).....	3
Waiter/waitress/cocktail (512.52, 511.34).....	17
Banquet Waiter/waitresses (511.39).....	4

A review of the above data discloses that 27 of the 48 persons who signed union cards on November 2 had not worked any hours for Respondent Employer at the time the latter recognized the Union on November 4. Moreover, 10 of the remaining 21 persons who had signed cards on November 2 had worked less than 10 hours at the time they signed. As counsel for the General Counsel also points out, the record indicates that the arbitrator counted the card signed by Jeanette Strutynski on November 2, although she was not even hired until November 16. Under these circumstances, only two of the card signers were actually working employees at the time they signed cards on November 2. In fact, 10 of the other persons who signed cards had not worked a day and a half. Consequently, it would appear that there were only 11 employees employed by the Employer more than a few days before the newly hired individuals were solicited by the Union.

Neither Respondent Employer nor Respondent Union presented any evidence during this proceeding and the above statistical data are well supported by the documentary evidence (G.C. Exhs. 2(A), 4, 6, and 7), as well as by the undisputed and credited testimonial evidence presented by the General Counsel.

Under the foregoing circumstances, it is clear that only 21 of the 48 card signers actually performed work for compensation on November 2, when they signed a card

for the Union. As counsel for the General Counsel argues, the Board has held in *Ra-Rich Mfg. Corp.*, 120 NLRB 1444, 1447 (1958), that:

It is well settled that, in order to be eligible to vote, an individual must be employed and working on the established eligibility date, unless absent for one of the reasons set out in the Direction of Election.

In so holding, the Board referred to its prior holding in *Schick Inc.*, 114 NLRB 931, 934 (1955). Thus, it appears that it would logically and consistently follow that only an individual who is employed and working on the date he or she signs a union authorization card for representation would be eligible to make such an authorization. Since the arbitrator counted the cards of 28 signers who had not commenced working on November 2, 1981, I find that such 28 individuals were not eligible to authorize union representation or grant authorization for an election on that date (November 2). Nevertheless, the record shows that based on the arbitrator's card count, the Hotel and the Union negotiated a collective-bargaining agreement which became effective November 14, 1981. The record does not show that any of the employees or any of the newly hired individuals had participated in bargaining sessions which resulted in the collective-bargaining agreement between Respondent Employer and Respondent Union.

Increase in Hiring Staff

Counsel for the General Counsel's Exhibit 7 shows that 552 individual employees have been in the unit since the date of their hire and continuing through September 1, 1982. Further review of his exhibit shows that by November 4, the date on which Respondent Employer extended recognition to the Union, 76 employees had been hired of which 44 had not commenced work. Similarly, the payroll records for the period ending November 5 show the names of 36 individuals who had been hired, of which 31 had not commenced working.

In view of the early recognition extended to the Union by Respondent Employer, Tchekmeian, president of Respondent Employer, in response to questions by counsel for the General Counsel, proceeded to explain the hiring procedures of Respondent Employer. He testified without dispute that before the hotel opened he projected the hotel would hire 220 to 230 employees once the hotel achieved normal operation, which requires about 65- to 70-percent occupancy. Based on the studies he had in his possession, he said a low occupancy was indicated for November and December 1981, and January and February 1982. Thus, he said he tried to hire as few people as possible. Prior to the opening of the hotel during late October and December, he said some of the new hired people were in training, serving and accommodating guests of the managerial staff, while others performed needed tasks in any department. This procedure continued for several weeks after the hotel opened until business was improved. He said that, although the hotel had bookings in November and December, such bookings were not anticipated and he had to add additional employees. In fact he testified that he had to hire even

more employees than he normally would have hired since the hotel kitchens were not completed.

How Respondent Employer actually increased its staff is shown by counsel for the General Counsel's compilation of data from Respondent Employer's records.

Average Number of Employees From December 2, 1981 (Period Closest to Opening) Through September 1, 1982 256.40

Inspectress (410.08).....	7.56
Maids (410.09).....	23.38
Commercial Maids (410.10).....	2.38
Housemen (410.15).....	11.33
Laundry Supervisor (412.20).....	.93
Bellman (410.13).....	10.45
Laundry (412.21).....	5.98
Cooks (511.32).....	30.35
Kitchen Utility (511.33).....	22.13
Waiters/Waitresses (511.34).....	36.83
Host/Hostess (511.35).....	5.18
Busboys (511.36).....	5.38
Banquet Servers (511.39).....	25.43
Banquet Utility (511.40).....	10.10
Cocktail Waitress (512.52).....	16.40
Bar Busboys (512.54).....	3.63
Maintenance (510.71).....	6.15
Banquet Bartender (512.56).....	7.85
Food & Beverage Cleaners (511.37).....	8.35
Bartenders (512.51).....	16.78

Hours Worked by Unit Employees During First Three Payrolls (Taken from G.C. Exhs. 4, 5, and 6)

<i>Payroll Ending</i>	<i>No. of Employees on Payroll</i>	<i>Regular Hrs. Worked by Unit</i>
11/5.....	34	626
11/19.....	120	3155.25
12/3.....	245	8537.25

In view of the statistical data in General Counsel's Exhibit 7 and the Employer's payroll records for the 2-week period ending November 5 (G.C. Exhs. 4 and 5), 1 day after recognition was extended to the Union, 31 of 34 employees worked a total of 626 hours and 33 hours overtime. Subsequently, payroll records for the period ending November 19 (G.C. Exhs. 5 and 6) show that 120 employees worked a total of 3155.25 hours, and 218.25 hours overtime. When the agreement which was executed sometime in mid-November (16-18) the hotel had approximately 141 hired persons. When the agreement between Respondent Employer and Respondent Union was signed on December 30, 1981, General Counsel's Exhibit 7 shows that Respondent Employer had already hired 260 individuals. The evidence fails to show that any of the hired employees had participated in negotiations for the agreement effectuated at that time. Thereafter, General Counsel's Exhibit 7 shows that the number of persons hired by Respondent Employer increased as high as 287 by March 17, 1982, even though the evidence fails to

show that the hotel had reached a 60- to 70-percent occupancy.

Hence, on the allegation of unlawful and premature recognition of the Union, the issue raised is whether Respondent Employer lawfully recognized Respondent Union on November 4, 1981, and executed the agreement with Respondent Union in mid-November 1981, at a time when Respondent Employer had not employed a representative number of its ultimate complement of unit employees, and before it was engaged in normal business operations of the hotel.

Conclusions

In this regard, it is well established from the hotel's hiring history that it both anticipated and actually achieved a consistent growth in business with a corresponding increase in staff (employees) throughout the months November 1981 through March 1982. Moreover, the evidence shows that from the size of the economic investment (size and type of hotel facility), the considerable business experience of management, and the established actual growth in business, it may be reasonably inferred that Respondent Employer was not surprised by the growth and progress of its business during those months, as Tchekmeian and Columbo discreditedly testified. Rather, it is clear that such successful results were well within the contemplation of management. Consequently, I conclude and find that Respondent Employer conceded to recognize Respondent Union on November 4, 1981, when it knew it had not hired anywhere near a substantial number of the complement of workers it had contemplated hiring within a few days from that time.

As the Board held in *Herman Bros.*, 264 NLRB 439, 440-441 (1982), whether recognition was lawfully extended to a union is determined by:

(1) [A]t the time when recognition is extended, the jobs or job classifications designated for operation involved must be substantially filled, and (2) the operation involved must be in normal production. The Board has not established a *per se* rule for determining whether there has been premature recognition, but has evaluated the facts to determine whether employees realistically have had an opportunity to select a bargaining representative. Although not determinative, the Board has looked to the test set forth in *General Extrusion* to determine whether recognition is lawful. As in the contract-bar area, the Board, in deciding whether recognition has been improperly extended, has attempted to protect the rights of employees who *are* working, as well as those who are to work in the future.

In *General Extrusion Co.*, 121 NLRB 1165 (1958), the Board held among other things that the employer must have employed 30 percent of its employees in 50 percent of its job classifications in order for a contract to be a bar to an election.

Here, it is unequivocally established by the evidence that Respondent Employer extended recognition to Respondent Union at a time when the designated classified jobs of its operation were not substantially filled, and

before the hotel was even officially opened for normal business operation. I therefore conclude and find that Respondent Employer recognized Respondent Union and entered into a purported collective-bargaining agreement with Respondent Union, at a time when it did not have a representative segment of its ultimate employee complement nor a normal and functioning appropriate collective-bargaining unit of employees. More specifically, on November 4, 1981, 21 employees had not commenced performing work under normal business operations as compared to 263 employees who were hired and were at work on December 30, 1981, when the hotel opened and business operations became more normal. Such recognition was extended and the agreement entered into between the parties at a time when the Union did not represent an uncoerced majority of employees. Under these circumstances, such action discriminatorily deprived a substantial majority of the employees of the right to select a collective-bargaining representative of their own choosing, in violation of Section 8(a)(1) and (3) of the Act. *Sheraton Great Falls Inn*, 242 NLRB 1255, 1256 (1979); *Allied Products Corp.*, 220 NLRB 732, 734-735 (1975), and *Lianco Container Corp.*, 173 NLRB 1444, 1447 (1969).

Reasons why premature recognition is unlawful is further explained by the Board in *Cowles Communications*, 170 NLRB 1596, 1610-1611 (1968), where the Board said:

The Board has consistently held with court approval that where an employer recognizes a union as the exclusive bargaining representative of its employees on the basis of a majority demonstrated by cards or a petition, as here, such recognition is inappropriate and unlawful if it is granted before the employer has recruited a work force that can be considered substantially representative of his anticipated complement of employees. The basis for the position is that otherwise a nonrepresentative initial working force would be permitted to designate the bargaining representative which would not be the choice of a majority of the electorate but of an untypical minority. The majority of employees on whose behalf the union would eventually act as exclusive representative would have no voice in that important choice even though they would come under the bargaining responsibility of the union. The Board's policy against premature recognition is also a necessary corollary to the well-established proposition that an employer may not recognize or bargain with a union which has not demonstrated majority support within the unit it is seeking to represent. [Citing *Ladies Garment Workers (Bernhard-Altmann Texas Corp.)*, 366 U.S. 731, 737 (1971).]

C. Employee Reaction to Recognition of the Union and the Collective-Bargaining Agreement Negotiated Between the Employer and the Union

According to the undisputed, essentially consistent, and credited testimony of employee *Malinda Hull*, she, in response to a notice from management, attended the

company-called meeting of employees during worktime on November 2, 1981 (heretofore described under topic B, supra), regarding employees' insurance. Members of management extended a welcome to employees and told them about probable dates the hotel would open. At the end of the meeting, Union Business Manager Wolfgang Hammer, who was present during the meeting, distributed union authorization and insurance cards to the employees without explaining any distinction between the two cards. Hammer assisted employees in completing the cards.

Similarly, according to the undisputed, corroborated, essentially consistent, and credited testimony of employees *Malinda Hull* and *Joe Jean Allen*, they attended a company-called meeting of employees during worktime on December 30, regarding employees insurance. Approximately 150 employees were present and Union Business Manager Joseph Diliberto introduced himself, Union Assistant Business Manager Wolfgang Hammer, and one Mr. Geddis. Geddis told the employees he was there to represent the hotel. At the end of the meeting employees asked several questions such as what was Diliberto's position with the Union and whether or not employees had to join the Union. Diliberto told them that employees had to join the Union; that they had to join the Union in order to work there; and that they had no recourse. He thereafter had the union authorization cards distributed to employees, which some employees refused to accept, others signed, and others took their cards home. Diliberto then read the highlights of the contract negotiated between the Union and Employer.

Immediately after the above meeting, a petition (G.C. Exh. 8) was prepared by *Malinda Hull* and thereafter typed, distributed, and signed by 25 employees demanding ouster of the Union because the signers were not in accord with the constitution and bylaws of the Union, nor with the agreement negotiated between the Employer and the union. Copies of the petition were sent to the Employer, the Union, and the National Labor Relations Board. On the same afternoon (December 30), they attended another company-called meeting of employees in ballroom D. There were approximately 30 employees present. Diliberto made the same introduction he made at the first meeting, and he told them he was their local representative and was going to discuss the contract that had been signed between Employer and the Union.

Hull continued to testify as follows:

Let me back up and begin again. I directed several questions to him concerning whether we did have to join the union. Initially he refused to recognize me because he said he didn't want to discuss anything with me and he had seen me before and I think he had labeled me as a trouble maker.

JUDGE GADSDEN: Did he tell you this in the meeting?

THE WITNESS: Yes, he did. He was not going to talk with me.

JUDGE GADSDEN: He said this in the open meeting?

THE WITNESS: Yes, he did.

JUDGE GADSDEN: And he said why?

THE WITNESS: He said because I had already attended a meeting before and that he had nothing to discuss with me. . . .

A. Okay. At that point I responded to him that I was—that supposedly I was a member of this union and I felt it was my right to air my opinions with him in an open forum. And that I also felt that—I continued on saying that apparently I had helped the Union get into the Hilton that was supposed to be the election for the Union. And I didn't—what I said at that point was that I didn't feel that their methods for getting into the hotel seemed to be totally legitimate.

He responded to me by apologizing. And his tone for not being made aware of what the membership card entailed as I had signed it. And at that point, he listened and he basically began to listen to what I had to say.

And he continued on, as I said—his tone changed once I had made the statement about the membership card.

There was question again—I brought up questions as to whether he had to join the union and he said yes, there was no legal recourse that we had. Local 471 was in the Albany Hilton and that there was nothing that we could do about it.

Hull acknowledged, however, that Diliberto told the employees they had to join the Union after 30 days on the job, and he read that portion of the union-security clause of the contract to them.

Employee *Sally Rogers* undisputedly testified that, when she was interviewed with Catering Manager *Solcum* in October 1981, she asked him if there was a union in the hotel. He told her yes there was and she told him she had been affiliated with Local 471 for 10 years and she did not want to be reaffiliated with that Union. *Solcum* said, "No, I don't know at this point," and she started to work December 1, 1981. *Rogers* also stated that, having been a banquet server in various hotels for 10 years, she learned from experience that the busy season is November through February of each year and the slow months are July through August. She further testified that to her knowledge none of the employees was ever told that section VI of the contract (union security) was not effective. She testified that on July 17, 1972, *Wurzak*, director of catering, and *Hammer* approached her and asked her to accompany them to a meeting. During the meeting *Wurzak* stated to her as follows:

"I will not let any other union other than Local 471" "I will not recognize any other union but that one."

A. And I said to him, "Excuse me, Mr. *Wurzak*, I don't think its up to you as management to tell Hilton employees as to what union is going to be recognized here."

Q. Did he tell you that you would be fired if you didn't join the Union?

A. He said, "I feel as though you have been brought into this hotel by another union other than Local 471 and if that's the fact we don't want you here." That's exactly what he said.

Q. I apologize for him.

A. When I got done with the meeting, they both shook my hand and everything was fine. But yes, management has told me it was a union house.

Employee *Barbara Dietrich* testified that she was employed November 1981 to April 1982 as a bartender; and that she first met Hammer during the second week of January 1982 while working in the Cinnamons Lounge. He walked over to her and introduced himself, handed her four cards (G.C. Exh. 11), asked her to fill them out, and said he was a representative of Local 471. He also told her he had some papers that had to do with the employees dental and health insurance. She asked him could she see the papers, and he said, "No," that he would give them to her after she signed the papers. She asked him could she take the papers home and return them. Hammer said, "No, it was taking a long time to get everybody to sign the cards and it would just be another trip for him and he wanted us to sign them." He was very insistent and she ultimately signed the papers including the union card. This was the first occasion on which she was approached by the Union since she did not attend the meeting in December.

The parties stipulated that the Respondent Employer started deducting dues checkoff in June 1982.²

The parties also stipulated that if Hammer were to testify herein, he would testify to the best of his knowledge that the cards (G.C. Exh. 12(a)) were obtained on November 2, 1982. Diliberto passed on June 26, 1982, and was therefore unavailable to appear and testify herein.

Analysis and Conclusions

Based on the foregoing uncontroverted evidence summarized under topics B and C, supra, I conclude and find that Respondent Employer's vice president Tchekmeian has known union representative Diliberto for many years; and that Diliberto had contacted Tchekmeian in April 1981 about Local 471 representing the prospective employees of the hotel. Although Tchekmeian testified he told Diliberto if the employees were willing for Local 471 to represent them it was all right, Tchekmeian nevertheless conveniently permitted Local 471 representative Wolfgang Hammer to attend a company-called meeting of employees during working time on November 2, 1981. Present at the meeting were the Employer's general manager Phillip Columbo, union representative Hammer, and about 70 newly hired employees. At the end of the meeting, Tchekmeian permitted Hammer to distribute insurance cards along with union authorization cards to the employees, most of whom had not com-

menced work performance for the hotel. Hammer urged employees to sign the union cards and assisted some of them in filling out the cards.

Since Hammer, who was present throughout the meeting, distributed insurance and union authorization cards at the end of the meeting, several employees were thereby led to believe or assume that the insurance card, as well as the union card, all had the blessings of management and were all a part of the hiring process. They felt obligated to sign both cards and their beliefs or assumptions in this regard were not unreasonable, since union representative Hammer was present along with members of management during the meeting, and there was no distinct conclusion or separation of that meeting from the time Hammer got the attention of the employees in the same meeting place. Hammer collected the signed union cards before leaving the meeting.

On the next day, November 3, Hammer or the Union had the signed cards counted by a mutually agreed-on arbitrator. On the following day, November 4, the Union requested recognition and the Respondent Employer granted recognition to Local 471. Only 11 days later, November 15, Respondent Employer and Respondent Union executed a contract purportedly on behalf of the hotel employees.

It is particularly observed that the same climate of management approval prevailed at the second company-called meeting of employees during worktime on December 30, 1981, where Union Business Manager Diliberto was present with members of management, and introduced himself, union representative Hammer, and member of management Geddis. At this meeting, Diliberto was putting on a hard sale of union solicitation since the number of employees had risen from about 70 present at the first meeting to 150 at the present meeting. Diliberto strongly urged and insisted that the employees join the Union. He was reluctant to entertain questions from the employees about the Union, or to allow employees to take their cards with them to think it over. Instead, Diliberto had union authorization cards distributed to the employees and proceeded to explain the highlights of the agreement negotiated between the Union and the Employer on November 15, 1981.

It is further observed, however, that the evidence fails to demonstrate that a single employee participated in or had any input in the negotiations which resulted in the agreement between the Employer and the Union. Moreover, it is also noted that as early as October 1981, the Employer's catering manager Solcum told Sally Rogers during her interview for employment that the hotel was unionized. Although the hotel had not in fact been unionized at the time, it nonetheless appears significant that Rogers at that time expressed her displeasure with having been affiliated with Local 471, and it turns out that it was local 471's Diliberto who has known hotel Vice President Tchekmeian for several years and had contacted him as early as April about representing the employees; that it was representatives of Local 471 whom the Employer permitted to attend company-called meetings with employees during worktime in November and december to solicit employees membership; that a

² Although the parties stipulated that Respondent Employer commenced deducting dues checkoff in June 1982, no claim has been made for the return of such dues. Since the Employer has held dues in escrow and no dues have been paid to the Union, I will not make any findings in this regard. Additionally, although counsel for the General Counsel said he was not establishing evidence of unlawful assistance, such assistance was established, and since the complaint alleged such assistance, a finding of unlawful assistance will be made.

contract was quickly negotiated between Respondent Employer and Respondent Union without employee participation, only 11 days after the Employer extended recognition to the Union; that these subsequent events tend to substantiate Rogers' testimony that the Employer had contemplated unionization of the hotel by Local 471 early in the game, and that as a result thereof, accorded the Union the convenience of attending one company meeting with employees and management before the hotel was opened for business, and a second such meeting thereafter; that in doing so Respondent Employer permitted itself to be used as an agent of Respondent Union for purposes of solicitation; and that all of these factors constitute unequivocal evidence of not only premature recognition, as hereinbefore found, but unlawful rendition of aid, assistance, and support to Respondent Union, in violation of Section 8(a)(1) and (2) of the Act. *P.C. Foods*, 249 NLRB 433, 438-439 (1980); *Vernitron Electrical Components*, 221 NLRB 464, 465 (1975).

Finally, I also conclude and find on the foregoing evidence that not only were the efforts of Respondent Union to organize the employees commensurate with the haste and swiftness with which Respondent Employer extended recognition to the Union, but the speedy agreement negotiated by Respondent Employer and Respondent Union was obtained with the total exclusion of employee participation and involvement. *Siro Security Service*, 247 NLRB 1266, 1273 (1960); *R. J. E. Leasing Corp.*, 262 NLRB 373 (1982).

Consequently, I conclude and find under the above-described circumstances that Respondent Union coerced and restrained employees of Respondent Employer, in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1)(A) of the Act; and that Respondent Union's conduct also attempted to cause, and did in fact cause, Respondent Employer to discriminate against its employees, in violation of Section 8(b)(2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent Employer and Respondent Union set forth in section III above, occurring in close connection with its operations as described in sections I and II above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent Employer has engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Having found that Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent Employer interfered with, restrained, and coerced its employees in the exercise of their Section 7 protected rights, in violation of Section 8(a)(1), by rendering aid, assistance, support, and premature recognition to the Union; in violation of Section 8(b)(2) of the Act; and by the same conduct discriminating against its employees in violation of Section 8(a)(3) of the Act, the recommended Order will provide that Respondent Employer cease and desist from engaging in such unlawful conduct and, that it take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent Union interfered with, restrained, and coerced Respondent Employer's employees in the exercise of their Section 7 protected rights, in violation of section 8(a)(1) of the Act, by pressuring employees to sign its cards without giving them reasonable time and an explanation thereof, while receiving aid, assistance, and support from Respondent Employer; and by attempting to cause, and in fact causing, Respondent Employer to discriminate against its employees, in violation of Section 8(b)(2) of the Act, the recommended Order will provide that Respondent Union cease and desist from engaging in such unlawful conduct, and take certain affirmative action to effectuate the policies of the Act.

Because of the character of the unfair labor practices herein found the recommended Order will provide that Respondent Union cease and desist from or in any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, supra, 120 F.2d 532, 536 (4th Cir. 1941).

On the basis of the above findings of fact and on the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Ten Eyck Hotel Associates d/b/a Hilton Inn Albany is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By recognizing Hotel, Motel and Restaurant Employees and Bartenders Union, Local 471, AFL-CIO as the exclusive bargaining representative of its employees and by executing a contract with said Respondent Union covering such employees at a time when Respondent Union did not represent an uncoerced majority of such employees and when the Company did not employ a substantially representative number of its anticipated complement of employees, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 in violation of Section 8(a)(1) of the Act.

4. By maintaining and giving effect to its collective-bargaining agreement which contained a union-security clause with Respondent Union dated December 30, 1981, or any renewal, extension, or modification thereof, Respondent violated Section 8(a)(1) and (3) of the Act.

5. By rendering aid and assistance to Respondent Union to solicit union authorization cards from its employees, Respondent Employer violated Section 8(a)(1), and (2), of the Act.

6. By including a union-security clause in its contract, Respondent Employer has violated Section 8(a)(1), (2), and (3) of the Act.

7. By accepting recognition and executing a collective-bargaining agreement with respondent Employer at a time when Respondent Union did not represent an uncoerced majority of Respondent Employer's employees, and when the Employer did not employ a work force

which was substantially representative of its anticipated employee complement, Respondent Union has violated Section 8(b)(1)(A) of the Act.

8. By maintaining and giving effect to its collective-bargaining agreement which included a union-security clause with Respondent Employer dated December 30, 1981, or any renewal, extension, or modification thereof, Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
[Recommended Order omitted from publication.]